

Senate Bill No. 1150

CHAPTER 197

An act to add Chapter 4 (commencing with Section 14700) to Division 6 of the Business and Professions Code, relating to lenders.

[Approved by Governor July 27, 2004. Filed with
Secretary of State July 27, 2004.]

LEGISLATIVE COUNSEL'S DIGEST

SB 1150, Burton. Lender names.

Existing law, the Trademark Law, provides for the registration of a trademark with the Secretary of State. Under existing law, the owner of a registered mark may bring a civil action for the unauthorized use of the mark.

This bill would prohibit the inclusion of the trade name, logo, or tagline of a lender, as defined, in a written solicitation for financial services directed to a consumer, subject to specified exceptions. The bill would prohibit the use of the name of a lender, or the use of a similar name, in a solicitation for financial services directed to a consumer. The bill would also prohibit the inclusion of certain loan information of a consumer in a solicitation for services or products, subject to specified exceptions. The bill would authorize the recovery of actual damages and would authorize injunctive relief for a violation of these provisions. The bill would authorize the prevailing party in an action to recover costs and reasonable attorney's fees as determined by the court.

The people of the State of California do enact as follows:

SECTION 1. Chapter 4 (commencing with Section 14700) is added to Division 6 of the Business and Professions Code, to read:

CHAPTER 4. SOLICITATIONS FOR FINANCIAL SERVICES

14700. (a) "Lender" as used in this chapter means a bank, savings and loan association, savings bank, credit union, industrial bank, or other lender licensed to make loans in California or a subsidiary or an affiliate of one of those entities.

(b) "Financial services" as used in this chapter means financial services or products that are considered to be financial in nature as described in Section 1843(k) of Title 12 of the United States Code.

14701. (a) No person shall include the name, trade name, logo, or tagline of a lender in a written solicitation for financial services directed to a consumer who has obtained a loan from the lender without the consent of the lender, unless the solicitation clearly and conspicuously states that the person is not sponsored by or affiliated with the lender and that the solicitation is not authorized by the lender, which shall be identified by name. This statement shall be made in close proximity to, and in the same or larger font size as, the first and the most prominent use or uses of the name, trade name, logo, or tagline in the solicitation, including on an envelope or through an envelope window containing the solicitation.

(b) No person shall use the name of a lender or a name similar to that of a lender in a solicitation for financial services directed to consumers if that use could cause a reasonable person to be confused, mistaken, or deceived initially or otherwise as to either of the following:

(1) The lender's sponsorship, affiliation, connection, or association with the person using the name.

(2) The lender's approval or endorsement of the person using the name or the person's services or products.

14702. No person shall include a consumer's loan number or loan amount, whether or not publicly available, in a solicitation for services or products without the consent of the consumer, unless the solicitation clearly and conspicuously states, when applicable, that the person is not sponsored by or affiliated with the lender and that the solicitation is not authorized by the lender, and states that the consumer's loan information was not provided to that person by that lender. This statement shall be made in close proximity to, and in the same or larger font as, the first and the most prominent use or uses of the consumer's loan information in the solicitation, including on an envelope or through an envelope window containing the solicitation.

14703. It is not a violation of this chapter for a person in an advertisement or solicitation for services or products to use the name, trade name, logo, or tagline of a lender without the statement described in subdivision (a) of Section 14701 if that use is exclusively part of a comparison of like services or products in which the person clearly and conspicuously identifies itself or that otherwise constitutes nominative fair use. Nothing in this chapter shall be deemed or interpreted to alter or modify the trade name and trademark laws of this state, including Chapter 2 (commencing with Section 14200) and Chapter 3 (commencing with Section 14400).

14704. (a) A person who violates Section 14701 or 14702 shall be subject to an injunction against that use. In an action to enjoin a violation of subdivision (a) of Section 14701 or Section 14702, it is not necessary



to allege or to prove actual damage to the plaintiff, and irreparable harm and interim harm to the plaintiff shall be presumed. In the action to enjoin a violation of subdivision (b) of Section 14701, affidavits that show consumers were confused, mistaken, or deceived as to a matter described in subdivision (b) of Section 14701 is prima facie evidence of damage and injury to the plaintiff. In addition to injunctive relief, the plaintiff is entitled to recover in the action the amount of the actual damages, if any, it sustained.

(b) The prevailing party in an action brought under this chapter is entitled to recover its costs and reasonable attorney's fees as the court may determine.

